

## Senate File 2116 - Introduced

SENATE FILE 2116

BY BARTZ, SMITH, BEHN,  
FEENSTRA, KAPUCIAN,  
HAMERLINCK, DIX, WHITVER,  
CHELGREN, ANDERSON,  
SEYMOUR, GREINER, SORENSON,  
ERNST, BACON, BOETTGER,  
HAHN, KETTERING, and ZAUN

(COMPANION TO LSB 5137HH BY  
PETTENGILL)

### A BILL FOR

1 An Act relating to the review of administrative rules and the  
2 rulemaking process.  
3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

1 Section 1. Section 7.17, Code 2011, is amended to read as  
2 follows:

3 **7.17 Office of administrative rules coordinator.**

4 1. The governor shall establish the office of the  
5 administrative rules coordinator, and appoint its staff, which  
6 shall be a part of the governor's office.

7 2. The administrative rules coordinator shall receive all  
8 notices and rules adopted pursuant to chapter 17A and provide  
9 the governor with an opportunity to review and object to any  
10 rule as provided in chapter 17A.

11 3. a. The administrative rules coordinator shall create a  
12 citizens' committee, consisting of regulators, stakeholders,  
13 members of the public, and legislators, to advise the  
14 administrative rules coordinator on rulemaking issues.

15 b. The members of the committee shall not be paid a per diem  
16 but shall be reimbursed for travel expenses.

17 Sec. 2. Section 17A.4, subsection 1, paragraph b, Code 2011,  
18 is amended to read as follows:

19 b. (1) Afford all interested persons not less than twenty  
20 days to submit data, views, or arguments in writing, including  
21 in an electronic format. If timely requested in writing by  
22 twenty-five interested persons, by a governmental subdivision,  
23 by the administrative rules review committee, by an agency, or  
24 by an association having not less than twenty-five members, the  
25 agency must give interested persons an opportunity to make oral  
26 presentation.

27 (2) To the extent practicable, the agency shall provide an  
28 opportunity to make these oral presentations using the Iowa  
29 communications network or other electronic means and provide  
30 public access at multiple sites throughout the state. If  
31 a request is received from twenty-five interested persons  
32 residing in the same city or county, the agency shall provide  
33 an opportunity for oral presentation in that city or county.

34 (3) The opportunity for oral presentation must be held  
35 at least twenty days after publication of the notice of its

1 time and place in the Iowa administrative bulletin. The  
 2 agency shall consider fully all written and oral submissions  
 3 respecting the proposed rule. Within one hundred eighty  
 4 days following either the notice published according to the  
 5 provisions of paragraph "a" or within one hundred eighty  
 6 days after the last date of the oral presentations on the  
 7 proposed rule, whichever is later, the agency shall adopt a  
 8 rule pursuant to the rulemaking proceeding or shall terminate  
 9 the proceeding by publishing notice of termination in the Iowa  
 10 administrative bulletin.

11 Sec. 3. Section 17A.4, subsection 2, Code 2011, is amended  
 12 to read as follows:

13 2. An agency shall include in a preamble to each rule  
 14 it adopts ~~a brief explanation of the principal reasons for~~  
 15 ~~its action pursuant to section 17A.5 a concise statement~~  
 16 of the principal reasons for and against the rule adopted,  
 17 incorporating in the statement the reasons for overruling  
 18 considerations urged against the rule and, if applicable, a  
 19 brief explanation of the principal reasons for its failure  
 20 to provide in ~~that~~ the rule for the waiver of the rule in  
 21 specified situations if no such waiver provision is included  
 22 in the rule. ~~This explanatory requirement does not apply when~~  
 23 ~~the agency adopts a rule that only defines the meaning of a~~  
 24 ~~provision of law if the agency does not possess delegated~~  
 25 ~~authority to bind the courts to any extent with its definition.~~  
 26 ~~In addition, if requested to do so by an interested person,~~  
 27 ~~either prior to adoption or within thirty days thereafter, the~~  
 28 ~~agency shall issue a concise statement of the principal reasons~~  
 29 ~~for and against the rule adopted, incorporating therein the~~  
 30 ~~reasons for overruling considerations urged against the rule.~~  
 31 ~~This concise statement shall be issued either at the time of~~  
 32 ~~the adoption of the rule or within thirty-five days after the~~  
 33 ~~agency receives the request.~~

34 Sec. 4. NEW SECTION. 17A.4B Job impact statement.

35 1. a. "*Benefit*" means the reasonably identifiable and

1 quantifiable positive effect or outcome that is expected to  
2 result from implementation of a rule.

3     *b. "Cost"* means reasonably identifiable, significant, direct  
4 or indirect, economic impact that is expected to result from  
5 implementation of and compliance with a rule.

6     *c. "Cost-benefit analysis"* means regulatory analysis  
7 to provide the public with transparency regarding the  
8 cost-effectiveness of a rule, including the economic costs and  
9 the effectiveness weighed by the agency in adopting the rule.  
10 *"Cost-benefit analysis"* includes a comparison of the probable  
11 costs and benefits of a rule to the probable costs and benefits  
12 of less intrusive or less expensive methods that exist for  
13 achieving the purpose of the rule.

14     *d. "Jobs"* means private sector employment including  
15 self-employment and areas for potential for employment growth.

16     *e. "Jobs impact statement"* means a statement that does all  
17 of the following:

18         (1) Identifies the objective of a rule and the applicable  
19 section of the statute that provides specific legal authority  
20 for the agency to adopt the rule.

21         (2) Identifies and describes the cost that the agency  
22 anticipates state agencies, local governments, the public, and  
23 the regulated entities, including regulated businesses and  
24 self-employed individuals, will incur due to the implementation  
25 of and complying with a rule.

26         (3) Determines whether a rule would have a positive  
27 or negative impact on private sector jobs and employment  
28 opportunities in Iowa.

29         (4) Describes and quantifies the nature of the impact a rule  
30 will have on private sector jobs and employment opportunities  
31 including the categories of jobs and employment opportunities  
32 that are affected by the rule, and the number of jobs or  
33 potential job opportunities and the regions of the state  
34 affected by the rule.

35         (5) Identifies, where possible, the additional costs to

1 employers per employee due to implementation of and complying  
2 with a rule.

3 (6) Includes other relevant analysis requested by the  
4 administrative rules coordinator.

5 2. Prior to implementation of a rule, an agency shall  
6 take steps to minimize the adverse impact on jobs and  
7 the development of new employment opportunities due to  
8 implementation of the rule.

9 3. An agency shall provide a jobs impact statement to the  
10 administrative rules coordinator prior to publication of a  
11 notice of intended action or the publication of a rule without  
12 notice.

13 4. The jobs impact statement shall be published as part  
14 of the preamble to the notice of rulemaking in the Iowa  
15 administrative bulletin, unless the administrative rules  
16 coordinator determines that publication of the entire jobs  
17 impact statement would be unnecessary or impractical.

18 5. An agency shall accept comments and information  
19 from stakeholders prior to final preparation of the jobs  
20 impact statement. Any concerned private sector employer or  
21 self-employed individual, potential employer, potential small  
22 business, or member of the public may submit information  
23 relating to a jobs impact statement upon a request for  
24 information or prior to publication of a notice of intended  
25 action by an agency.

26 6. If a jobs impact statement is revised after a notice  
27 of intended action is published, the revised jobs impact  
28 statement shall be published as part of the preamble to the  
29 adopted version of the rule, unless the administrative rules  
30 coordinator determines that publication of the entire jobs  
31 impact statement would be unnecessary or impractical.

32 7. The analysis in the jobs impact statement shall give  
33 particular weight to jobs in production sectors of the economy  
34 which includes the manufacturing and agricultural sectors of  
35 the economy and include analysis, where applicable, of the

1 impact of the rule on expansion of existing businesses or  
2 facilities.

3 8. The administrative rules coordinator may waive the jobs  
4 impact statement requirement for rules proposed on an emergency  
5 basis or if unnecessary or impractical.

6 9. By July 1, 2013, and every five years thereafter, an  
7 agency shall prepare a comprehensive jobs impact statement  
8 for all of the agency's rules. An agency shall transmit  
9 each five-year comprehensive jobs impact statement to the  
10 administrative rules coordinator, the administrative rules  
11 review committee, and the administrative code editor. The  
12 administrative code editor shall publish the statement, or a  
13 summary, in the Iowa administrative bulletin.

14 Sec. 5. NEW SECTION. 17A.4C **Negotiated rulemaking.**

15 1. An agency shall create a negotiated rulemaking group if  
16 required by statute. An agency may, on its own motion or upon  
17 request, create a negotiated rulemaking group if the agency  
18 determines that a negotiated rulemaking group can adequately  
19 represent the interests that will be significantly affected by  
20 a draft rule proposal and that it is feasible and appropriate  
21 in the particular rulemaking. Notice of the creation of a  
22 negotiated rulemaking group shall be published in the Iowa  
23 administrative bulletin. Upon establishing a negotiated  
24 rulemaking group, the agency shall also specify a time frame  
25 for group deliberations.

26 2. Unless otherwise provided by statute, the agency shall  
27 appoint a sufficient number of members to the group so that  
28 a fair cross section of interests and opinions regarding the  
29 draft rule proposal is represented. One person shall be  
30 appointed to represent the agency. The group shall select its  
31 own chairperson and adopt its rules of procedure. All meetings  
32 of the group shall be open to the public. A majority of the  
33 membership constitutes a quorum. Members shall not receive  
34 any per diem payment but shall be reimbursed for all necessary  
35 expenses. Any vacancy shall be filled in the same manner as

1 the initial appointment.

2 3. Prior to the publication of a notice of intended action,  
3 the group shall consider the terms or substance of the rule  
4 proposed by the agency and shall attempt to reach a consensus  
5 on the advisability of adopting the draft rule proposal.

6 4. If a group reaches a consensus on a draft rule proposal,  
7 the group shall transmit to the agency a report containing the  
8 consensus on the draft rule proposal. If the group does not  
9 reach a consensus on a draft rule proposal within the specified  
10 time frame, the group shall transmit to the agency a report  
11 stating that inability to reach a consensus and specifying any  
12 areas in which the group reached a consensus. The group may  
13 include in a report any other information, recommendations,  
14 or materials that the group considers appropriate. Any group  
15 member may include as an addendum to the report additional  
16 information, recommendations, or materials. A report issued  
17 under this subsection shall not be considered final agency  
18 action for purposes of judicial review.

19 5. Unless otherwise provided by statute, following  
20 consideration of a draft rule proposal by a negotiated  
21 rulemaking group, the agency may commence rulemaking as  
22 provided in section 17A.4. The group is automatically  
23 abolished upon the agency's adoption of the rule pursuant to  
24 the provisions of section 17A.5.

25 Sec. 6. NEW SECTION. 17A.6A Rulemaking internet site.

26 1. Subject to the direction of the administrative rules  
27 coordinator, each agency shall make available to the public  
28 a uniform, searchable, and user-friendly rules database,  
29 published on an internet site.

30 2. An agency's rulemaking internet site shall also make  
31 available to the public all of the following:

32 a. A brief summary of the rulemaking process, including a  
33 description of any opportunity for public participation in the  
34 process.

35 b. Process forms for filing comments or complaints

1 concerning proposed or adopted rules.

2     *c.* Process forms and instructions for filing a request for  
3 the creation of a negotiated rulemaking group, a petition for  
4 rulemaking, a petition for a declaratory order, or a request  
5 for a waiver of an administrative rule.

6     *d.* Any other material prescribed by the administrative rules  
7 coordinator.

8     3. To the extent practicable, the administrative rules  
9 coordinator shall create a uniform format for rulemaking  
10 internet sites.

11     Sec. 7. Section 17A.7, subsection 2, Code 2011, is amended  
12 by striking the subsection and inserting in lieu thereof the  
13 following:

14     2. Over a five-year period of time, an agency shall conduct  
15 an ongoing and comprehensive review of all of the agency's  
16 rules. The goal of the review is the identification and  
17 elimination of all rules of the agency that are outdated,  
18 redundant, overbroad, ineffective, unnecessary, or otherwise  
19 undesirable. An agency shall commence its review by developing  
20 a plan of review in consultation with major stakeholders and  
21 constituent groups. As part of its review, an agency shall  
22 review existing policy and interpretive statements or similar  
23 documents to determine whether it would be necessary or  
24 appropriate to adopt these statements or documents as rules.

25     *a.* An agency shall establish its five-year plan for review  
26 of its rules and publish the plan in the Iowa administrative  
27 bulletin.

28     *b.* An agency's plan for review shall do all of the  
29 following:

30         (1) Contain a schedule that lists when the review of each  
31 rule or rule group will occur.

32         (2) State the method by which the agency will analyze  
33 the rule under review regarding the considerations listed in  
34 paragraph "*c*".

35         (3) Provide a means for public participation in the review



1 process and specify how interested persons may participate in  
2 the review.

3 (4) Identify instances where the agency may require an  
4 exception to the review requirements.

5 (5) Provide a process for ongoing review of rules after the  
6 initial five-year review period has expired.

7 c. An agency shall analyze its rules under review by  
8 considering all of the following:

9 (1) The need for the rule.

10 (2) The clarity of the rule.

11 (3) The intent and legal authority for the rule.

12 (4) The qualitative and quantitative benefits and costs of  
13 the rule.

14 (5) The fairness of the rule.

15 d. When an agency completes its five-year review of its  
16 rules, the agency shall provide a summary of the results to the  
17 administrative rules coordinator and the administrative rules  
18 review committee.

19 Sec. 8. Section 17A.23, Code 2011, is amended to read as  
20 follows:

21 **17A.23 Construction — delegation of authority.**

22 1. Except as expressly provided otherwise by this chapter  
23 or by another statute referring to this chapter by name, the  
24 rights created and the requirements imposed by this chapter  
25 shall be in addition to those created or imposed by every other  
26 statute in existence on July 1, 1975, or enacted after that  
27 date. If any other statute in existence on July 1, 1975, or  
28 enacted after that date diminishes a right conferred upon a  
29 person by this chapter or diminishes a requirement imposed upon  
30 an agency by this chapter, this chapter shall take precedence  
31 unless the other statute expressly provides that it shall take  
32 precedence over all or some specified portion of this ~~named~~  
33 cited chapter.

34 2. This chapter shall be construed broadly to effectuate  
35 its purposes. This chapter shall also be construed to apply

1 to all agencies not expressly exempted by this chapter or by  
2 another statute specifically referring to this chapter by ~~name~~  
3 citation; and except as to proceedings in process on July 1,  
4 1975, this chapter shall be construed to apply to all covered  
5 agency proceedings and all agency action not expressly exempted  
6 by this chapter or by another statute specifically referring to  
7 this chapter by name citation.

8     3. An agency shall have only that authority or discretion  
9 delegated to or conferred upon the agency by law and shall not  
10 expand or enlarge its authority or discretion beyond the powers  
11 delegated to or conferred upon the agency. Unless otherwise  
12 specifically provided in statute, a grant of rulemaking  
13 authority shall be construed narrowly.

14     Sec. 9. NEW SECTION. **17A.24 Rule implementation of federal**  
15 **statute, regulation, or policy.**

16     1. Except as otherwise explicitly authorized by state law,  
17 an agency charged with the implementation of a federal statute,  
18 regulation, or policy shall not implement the federal statute,  
19 regulation, or policy in a manner that exceeds the specific  
20 requirements of the federal statute, regulation, or policy.

21     2. Any portion of an agency rule or policy that implements  
22 a federal statute, regulation, or policy and that exceeds the  
23 specific requirements of the federal statute, regulation, or  
24 policy is automatically superceded by the specific requirements  
25 of that federal statute, regulation, or policy.

26     Sec. 10. ENVIRONMENTAL REGULATION STUDY.

27     1. The legislative council, in consultation with the  
28 department of natural resources, shall establish a study to  
29 analyze the projected financial effects of current and proposed  
30 United States environmental protection agency regulations and  
31 Iowa department of natural resources rules on Iowa cities over  
32 a ten-year period.

33     2. The study should include an analysis of projected  
34 financial costs of such regulations and rules on a hypothetical  
35 small Iowa community, medium-sized Iowa community, and large

1 Iowa community.

2 3. The study shall be concluded by June 30, 2013, and a  
3 report shall be provided to the members of the general assembly  
4 and to the governor.

5 EXPLANATION

6 This bill relates to the review of administrative rules and  
7 the rulemaking process.

8 CITIZENS' ADVISORY COMMITTEE. The bill requires that the  
9 administrative rules coordinator create a citizens' committee,  
10 to advise the administrative rules coordinator on rulemaking  
11 issues. The members of the committee shall not be paid a per  
12 diem but shall be reimbursed for travel expenses.

13 RULEMAKING HEARINGS THROUGHOUT STATE. The bill requires  
14 administrative agencies, when feasible, to hold rulemaking  
15 hearings in varied locations throughout the state via the Iowa  
16 communications network and provides that a hearing must be held  
17 in a particular city or county when 25 interested persons from  
18 that city or county make the request.

19 PRINCIPAL REASONS FOR AND AGAINST RULE. The bill requires  
20 that every adopted rule must be accompanied by a concise  
21 statement of the principal reasons for and against the rule  
22 adopted. Under current law such a statement is only provided  
23 on request.

24 JOBS IMPACT STATEMENTS. The bill requires that every  
25 proposed rule under a notice of intended action contain a jobs  
26 impact statement which outlines the objective and statutory  
27 authority of the rule and analyzes and sets out in detail  
28 the impact of the proposed rule on state agencies, local  
29 governments, the public, and the regulated entities, including  
30 regulated businesses and self-employed individuals affected by  
31 the rule. The statement must also determine whether a proposed  
32 rule would have a positive or negative impact on private sector  
33 jobs and employment opportunities.

34 Commencing July 1, 2013, and every five years thereafter,  
35 each agency shall prepare a jobs impact statement for all of

1 the agency rules. The statement will be published in the Iowa  
2 administrative bulletin.

3 As part of this requirement, an agency is required to  
4 takes steps to minimize the adverse impact on jobs and the  
5 development of new employment opportunities before proposing  
6 a rule.

7 The administrative rules coordinator may waive the jobs  
8 impact statement requirement for emergency-filed rules or if  
9 unnecessary or impractical.

10 NEGOTIATED RULEMAKING GROUPS. If required by statute,  
11 this bill requires an agency to create an ad hoc negotiated  
12 rulemaking group to review draft rule proposals prior to  
13 commencing a rulemaking proceeding. Where a statute does  
14 not require this review, the bill allows an agency to create  
15 such a review group. Members are appointed by the agency  
16 and the composition must adequately represent a fair balance  
17 of the interests affected by the rule. Once such a group is  
18 created, the agency may only commence rulemaking after the  
19 group has considered the draft rule proposal in question. This  
20 provision is based on similar provisions found in the federal  
21 Administrative Procedures Act.

22 USER-FRIENDLY INTERNET SITES. The bill requires each  
23 agency to make available to the public a uniform, searchable,  
24 and user-friendly rules database, published on an internet  
25 site, subject to the direction of the administrative rules  
26 coordinator. Each agency's internet site must contain  
27 specified information relating to the agency's rules and  
28 available procedures for public participation.

29 FIVE-YEAR CYCLE OF AGENCY REVIEW OF RULES. The bill requires  
30 that each state agency review all of its administrative  
31 rules on a five-year cycle. The plan for this review must be  
32 developed in consultation with stakeholders and constituent  
33 groups. The goal of the review is the identification and  
34 elimination of all rules of the agency that are outdated,  
35 redundant, overbroad, ineffective, unnecessary, or otherwise

1 undesirable.

2       NARROW CONSTRUCTION OF RULES. The bill also establishes  
3 a new rule of statutory construction: Unless otherwise  
4 specifically provided in statute, any grant of rulemaking  
5 authority shall be construed narrowly.

6       FEDERAL LAW IMPLEMENTATION. The bill also provides that  
7 state implementation of a federal statute, regulation,  
8 or policy by a state agency shall not exceed the specific  
9 requirements of the federal statute, regulation, or  
10 policy, except as specifically allowed by state law. Any  
11 portion of a state rule or policy that implements a federal  
12 statute, regulation, or policy and that exceeds the specific  
13 requirements of the federal statute, regulation, or policy is  
14 automatically superceded by the specific requirements of that  
15 federal statute, regulation, or policy.

16       ENVIRONMENTAL RULES STUDY. The bill provides that the  
17 legislative council, in consultation with the department of  
18 natural resources, shall establish a study to analyze the  
19 projected financial effects of current and proposed United  
20 States environmental protection agency regulations and Iowa  
21 department of natural resources rules on Iowa cities over a  
22 10-year period. The report of the study must be completed by  
23 June 30, 2013.